

Internal Revenue Service

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Department of the Treasury

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Third Party Communication: None

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PLR-138043-09

Date:

September 30, 2009

Legend

Company X =

Company Y =

Target =

Company Y Sub =

Company P =

Company Q =

Company R =

Purchaser =

Country A =

Territory A =

Territory B =

a =

b =

c =

d =

e =

f =

Year 1 =

Agreement 1 =

Agreement 2 =

Dear :

This letter responds to your letter dated August 10, 2009, in which you requested rulings under section 368(a)(1)(F) of the Internal Revenue Code. The information submitted in that letter and later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Summary of Facts

Target is a corporation incorporated in Territory A of Country A and is a controlled foreign corporation within the meaning of section 957. Target has issued and outstanding share capital consisting of common shares and preferred shares. Company X and Company Y each owns a percent and b percent, respectively, of Target's common stock and preferred stock. Company X and Company Y are otherwise unrelated and are both incorporated in Territory A. Company X is owned, directly and indirectly, by Company P, a foreign corporation. Company P is owned, directly and indirectly, by Company Q, a domestic corporation. Company R, a domestic

corporation, indirectly owns Company Y. In Year 1, Target and Company X entered into Agreement 1.

Company X wants to dispose of its entire interest in Target by selling all of its Target stock to Purchaser, an unrelated party. However, Purchaser and Company Y do not wish to acquire the stock of Target due to concerns about potential contingent liabilities of Target (the “Contingent Liabilities”). Accordingly, in order to address these concerns, Target has proposed to enter into the transaction described below. In conjunction with the proposed transaction, Company X, Company Y, Company P, Company Y Sub, and Target entered into Agreement 2.

Proposed Transaction

For what have been represented as valid business purposes, the following steps have been proposed (collectively, the “Proposed Transaction,” with Steps vi through x of the Proposed Transaction constituting the “Restructuring”):

- i. Target will increase the amount of its own stated capital (but will not issue any additional shares).
- ii. Company Y will transfer all of its Target shares to its wholly owned subsidiary, Company Y Sub, for additional common shares of Company Y Sub stock.
- iii. Company Y Sub will form an entity under the laws of Territory B (“Company Y DRE”) and transfer all of its Target shares to Company Y DRE for shares of Company Y DRE. Company Y DRE will be disregarded as an entity separate from its sole owner for U.S. federal income tax purposes.
- iv. Target will form an entity under the laws of Territory B (“Target DRE”) for nominal consideration. Target DRE will be disregarded as an entity separate from its sole owner for U.S. federal income tax purposes.
- v. Company X will form an entity under the laws of Territory B (“GP”) for nominal consideration. GP will be disregarded as an entity separate from its sole owner for U.S. federal income tax purposes.
- vi. Company X and GP will form a partnership governed by the laws of Territory A (“New LP Co”). Company X will become the c percent limited partner of New LP Co and GP will become the d percent general partner of New LP Co. New LP Co will elect to be treated as a corporation for U.S. federal income tax purposes.
- vii. Company X will acquire Company Y DRE’s b percent interest in Target preferred and common shares in exchange for a note (the “Company X Note”).

viii. Target will wind-up under applicable Country A law and distribute all its assets and liabilities to Company X. Target will be dissolved and cease to exist as soon as is practicable under Territory A law.

ix. Company X will transfer all of the Target assets and liabilities received in Step viii (excluding the Contingent Liabilities, if any) to New LP Co.

x. Company X will transfer an e percent interest in New LP Co to Company Y Sub (through Company Y DRE) in satisfaction of the Company X Note described in Step vii.

xi. Company X will sell its remaining f percent interest in New LP Co and its rights under Agreement 1, an agreement to which Target is a party, to Purchaser (or an affiliate of Purchaser) for cash.

xii. Company X will transfer its a percent and b percent interests in GP to Purchaser (or an affiliate of Purchaser) and to an affiliate of Company Y, respectively, for nominal consideration.

xiii. Company X will contribute a portion of the consideration received in Step xi to Target DRE.

Representations

In connection with the Restructuring, the taxpayer has made the following representations:

a. The fair market value of the stock of New LP Co received by Company X and Company Y Sub will be approximately equal to the fair market value of the Target stock deemed to be surrendered in the exchange.

b. Immediately following consummation of the Restructuring, Company X and Company Y Sub will own all of the outstanding New LP Co stock and will own such stock solely by reason of their ownership of Target stock immediately prior to the Restructuring.

c. New LP Co will not have at the time of the Restructuring, nor does it currently have, any plan or intention to issue additional shares of its stock following the Restructuring.

d. Immediately following consummation of the Restructuring, New LP Co will possess the same assets and liabilities (other than the Contingent Liabilities, if any) as those possessed by Target immediately prior to the Restructuring.

e. At the time of the Restructuring, Target will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in New LP Co.

f. New LP Co will not have at the time of the Restructuring, nor does it currently have, any plan or intention to reacquire any of its stock issued in the Restructuring.

g. The liabilities of Target to be assumed (within the meaning of section 357(d)) by New LP Co plus the liabilities, if any, to which the transferred assets are subject, were incurred by Target in the ordinary course of its business and are associated with the assets to be transferred.

h. Each party will pay its own expenses, if any, incurred in connection with the Restructuring, except that Company X will pay all expenses of Company Y DRE in accordance with Agreement 2.

i. Immediately after the Restructuring, the proportionate interest of Company X and Company Y Sub in New LP Co will be the same as their proportionate interests in Target immediately before the Restructuring. For purposes of this representation, any variation in the proportionate interest of Company X and Company Y Sub in New LP Co from Company X and Company Y Sub's proportionate interest in Target will be less than one percent. Rev. Rul. 66-284, 1966-2 C.B. 115.

j. At the time of the Restructuring, Target will not be under the jurisdiction of a court in a title 11 or similar case within the meaning of section 368(a)(3)(A).

Rulings

Based solely on the information submitted and the representations set forth above, we rule as follows:

1. For U.S. federal income tax purposes, the Restructuring will be treated as a direct transfer by Target of all of its assets to New LP Co in exchange for all of the New LP Co stock and the assumption by New LP Co of the liabilities of Target (other than the Contingent Liabilities, if any), followed by a liquidation of Target in which the New LP Co stock is distributed pro rata to Company X and Company Y Sub in cancellation of their respective stock interests in Target.

2. The Restructuring will qualify as a reorganization under section 368(a)(1)(F). Target and New LP Co will each be "a party to a reorganization" under section 368(b).

3. No gain or loss will be recognized by Company X and Company Y Sub upon their exchange of the shares of Target stock for shares of New LP Co stock (section 354(a)).

4. No gain or loss will be recognized by Target upon the transfer of its assets to New LP Co in the Restructuring in exchange for stock of New LP Co and the assumption by New LP Co of the Target liabilities (sections 361(a) and 357(a)).

5. No gain or loss will be recognized by New LP Co upon the receipt of Target assets in the Restructuring in exchange for New LP Co stock (section 1032(a)).

6. No gain or loss will be recognized to Target on the distribution of the New LP Co stock to its shareholders (section 361(c)).

7. The basis of each asset of Target held by New LP Co will be the same as the basis of that asset in the hands of Target immediately prior to the Restructuring (section 362(b)).

8. The basis of the New LP Co common stock received by each of Company X and Company Y Sub will be the same as the basis of the Target shares for which each will be exchanged (section 358(a)).

9. Provided the Target shares are held as a capital asset at the time of the Restructuring, the holding period of the New LP Co common stock received in exchange therefor will include the holding period of the Target shares (section 1223(1)).

10. The holding period of each asset of Target held by New LP Co will include the holding period of that asset in the hands of Target (section 1223(2)).

11. New LP Co will succeed to and take into account the tax attributes of Target described in section 381(c) (section 381(a) and section 1.381(a)-1 of the Income Tax Regulations). These items will be taken into account by New LP Co subject to the conditions and limitations specified in sections 381, 382, 383 and 384 and the Regulations thereunder.

12. Because Company X's sale of its interest in New LP Co to Purchaser (or an affiliate of Purchaser) will occur immediately after and will be pursuant to the same arrangement as the Restructuring, resulting in New LP Co not being a controlled foreign corporation as to which each of Company X and Company Y Sub is a section 1248 shareholder, the Restructuring will be a transaction to which section 1.367(b)-4(b)(1) applies. See Rev. Rul. 83-23, 1983-1 C.B. 82. Each of Company X and Company Y Sub will include in income as a deemed dividend the section 1248 amount attributable to its Target stock. Such deemed dividend will not be included as foreign personal holding company income under section 954(c). Pursuant to Treas. Reg. Sec. 1.367(b)-2(e), such deemed dividend shall be considered to be received immediately before

Company X's and Company Y Sub's receipt of the stock of New LP Co. In addition, Company X and Company Y Sub shall each increase its respective basis in the stock of Target by the amount of such deemed dividend. Such basis increase shall be taken into account before determining the basis that Company X and Company Y Sub take in the New LP Co stock received in the exchange under section 358(a)(1). Thus, Company X's and Company Y Sub's basis in the New LP Co stock will be equal to the basis in its Target stock immediately before such exchange, increased by the amount of any such deemed dividend. Further, the earnings and profits of Target shall be reduced by the amount of such deemed dividend.

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed regarding the following:

1. To the extent not otherwise specifically ruled upon above, the adjustments to earnings and profits or deficits in earnings and profits, if any, with respect to any of the transactions to which section 367 applies.
2. To the extent not otherwise specifically ruled upon above, any other consequences under section 367 with respect to any transaction described in this ruling letter.
3. Whether any or all of the above-referenced foreign corporations are PFICs within the meaning of section 1297(a). If it is determined that any such corporations are PFICs, no opinion is expressed with respect to the application of sections 1291 through 1298 to the proposed transactions. In particular, in a transaction in which gain is not otherwise recognized, regulations under section 1291(f) may require gain recognition notwithstanding any other provisions of the Code.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter will be sent to your authorized representative.

Sincerely,

Lewis K Brickates
Branch Chief, Branch 4
Associate Chief Counsel (Corporate)